Dear [Letter to Speaker and House Minorty Leader & House and Senate Leaders Reid and McConnell with copies to the bipartisan leadership of the House and Senate Judiciary Committees and House and Senate Foreign Relations Committees]:

Every day, U.S. citizens working, visiting, and living abroad have come to rely on the assistance of our embassies and consulates overseas. One right enjoyed by all Americans abroad is the right of access to one's consulate if arrested or detained by the host country. Article 36 of the Vienna Convention on Consular Relations (VCCR) grants individual foreign nationals a right of access to their consulate, and ensures that consulates can visit their nationals and help arrange legal representation. These services help ensure our citizens receive fair treatment when detained abroad. We applaud our dedicated embassy staff for vigorously defending these rights and assisting U.S. citizens who are arrested or detained abroad. The business community strongly supports Article 36 of the VCCR and believes that the United States, in order to ensure reciprocity for U.S. citizens, should lead the world in compliance. It is for this reason that we urge the U.S. Congress to enact legislation giving effect to the *Case Concerning Avena and Other Mexican Nationals*, 2004, I.C.J. 128.

In 2004, the International Court of Justice (ICJ) determined that the United States had violated Article 36(1)(b) of the VCCR by failing to inform 51 Mexican nationals of their VCCR rights, and by failing to notify consular authorities of the detention of 49 Mexican nationals. The United States voluntarily consented to the ICJ's jurisdiction to hear such complaints when it ratified in 1969 an Optional Protocol Concerning the Compulsory Settlement of Disputes.

President Bush, recognizing that the rule of law required the United States to comply with the ICJ's decision and to continue to preserve these rights for American citizens, issued a determination on February 28, 2005, that "the United States will discharge its international obligations . . . by having state courts give effect to the [ICJ's] decision in accordance with general principles of comity." The Supreme Court, however, in *Medellín v. Texas*, 552 U.S. 491 (2008), held that the Optional Protocol is not a self-executing treaty and that the president did not have the authority unilaterally to enforce the decision of the ICJ. The Court held that only Congress can transform a non-self executing treaty into binding federal law.

Justice Roberts, writing for the Court, noted that "[n]o one disputes that the *Avena* decision—a decision that flows from the treaties through which the United States submitted to ICJ jurisdiction with respect to Vienna convention disputes—constitutes an *international* law obligation on the part of the United States." Nevertheless, the Court held that the Avena judgment did not have automatic domestic legal effect and that, to give it effect, congressional action is required.

In a June 17, 2008 letter to Texas Governor Perry, Secretary of State Condoleeza Rice and Attorney General Mukasey summed the issue up as follows:

> The United States attaches great importance to complying with its obligations under international law. To that end, the President sought to discharge the international obligation of the United States by having state courts address the Vienna Convention claims of the Mexican nationals at issue. The Supreme Court determined in *Medellín* that the Executive Branch could not direct state courts to provide such relief as a matter of domestic law. In so ruling, however, the Court recognized, as Texas has, that the Avena judgment continues to bind the United States as a matter of international law.

We are concerned that the United States' continued failure to abide by our VCCR obligations will disadvantage U.S. citizens seeking the same treatment Mexico continues to seek for its citizens. We agree with President Bush that it is in our national interest to fully comply with our treaty obligations to ensure the same treatment for U.S. citizens abroad. The Obama Administration believes that "legislation would be an optimal way to give domestic legal effect to the Avena judgment . . . ." We agree and urge Congress the enact legislation that puts America in full compliance with the *Avena* judgment and our treaty obligations.

Sincerely,

U. S. Urges the Iranians To Obey Court Decision

Special to The New York Times

WASHINGTON, May 24 — The State Department said today that the decision by the International Court of Justice ordering Iran to release the American hostages and pay compensation to the United States was binding on Iran, and it called on the Teheran Government to carry out its provisions.

A formal statement said the United States was "deeply gratified" by the decision.

"The Court's judgment confirms that such conduct is inadmissible in a civilized international order and cannot be excused or justified by past grievances, whether real or imagined," the statement said.

State Department officials indicated privately, however, that they had little reason to expect compliance in light of Teheran's rejection of the Court's jurisdiction.

The United Nations Charter says that each member "undertakes to comply with the decisions" of the Court in any case to which it is a party and says that if it fails to do so, the other party "may have recourse to the Security Council."

In practice, nations have been bound by decisions of the Court only when they agreed in advance to carry out the verdict. The United States reserves the right to decide when the World Court has jurisdiction in a case involving the United States.

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